

# **HOUSE . . . . . No. 1912**

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By Mr. Walsh of Boston, petition of Martin J. Walsh and Elizabeth A. Malia relative to allowing the diversion of low-level offenders under court supervision from the drug treatment program of the Commonwealth. Mental Health and Substance Abuse.

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## **The Commonwealth of Massachusetts**

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In the Year Two Thousand and Seven.

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### **AN ACT TO AMEND THE COMMONWEALTH'S DRUG TREATMENT PROGRAM TO ALLOW FOR THE DIVERSION OF LOW LEVEL OFFENDERS UNDER COURT SUPERVISION.**

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1     SECTION 1. Chapter 111E of the General Laws is hereby  
2 amended by inserting the definition of “addiction specialist” to  
3 Section 1 as appearing in the 1998 Official Edition, as follows:—  
4     “Addiction specialist”, a person with an MD, PhD, RN, LICSW  
5 or other professional training who is licensed or certified by the  
6 department’s bureau of substance abuse services as a provider of  
7 substance abuse treatment.

1     SECTION 2. Said Chapter 111E of the General Laws is hereby  
2 amended by inserting the definition of “Bureau” in section as  
3 follows:—  
4     “Bureau”, the bureau of substance abuse services within the  
5 department of public health.

1     SECTION 3. Said Chapter 111E of the General Laws is hereby  
2 amended by striking out the definition of “Director” in Section 1,  
3 and inserting in place thereof the following:—  
4     “Director”, the director of the division of rehabilitation, his  
5 designee, the assistant commissioner in charge of the bureau or his  
6 designee.

1     SECTION 4. Said Chapter 111E of the General Laws is hereby  
2 amended by striking out the definition of “Drug dependent person”  
3 in Section 1, and inserting in place thereof the following:—

4     “Drug dependent person”, a person, regardless of age, who is  
5     unable to function effectively and whose inability to do so causes, or  
6     results from, the use of a drug other than alcohol, tobacco or lawful  
7     beverages containing caffeine, and other than from a medically pre-  
8     scribed drug when such drug is medically indicated and the intake is  
9     proportioned to the medical need, or a person who is at risk of  
10    becoming drug dependent, as defined herein.

1     SECTION 5. Said Chapter 111E of the General Laws is hereby  
2     amended by inserting the definition of “Second drug offense” to  
3     Section 1 as follows:—

4     “Second drug offense”, an illegal act which stands pending for  
5     trial wherein the defendant has been assigned to treatment under  
6     Chapter 111E one time previously.

1     SECTION 6. Said Chapter 111E of the General Laws is hereby  
2     amended by inserting the definition of “Successful completion of  
3     treatment” to Section 1 as follows:—

4     “Successful completion of treatment”, when the administrator of  
5     the facility has determined that the drug dependent person, as  
6     defined by this Act, has completed the requirements set forth by the  
7     individual patient treatment plan to the best of his current ability.

1     SECTION 7. Said Chapter 111E of the General Laws is hereby  
2     amended by striking out the definition of “Treatment” in Section 1,  
3     and inserting in place thereof the following:—

4     “Treatment”, services and programs for the care and rehabilitation  
5     of drug dependent persons, as defined by this Act, or persons in need  
6     of immediate assistance due to the use of a dependency related drug,  
7     including, but not limited to, educational, medical, psychiatric, psy-  
8     chological, vocational, educational, and recreational services and  
9     programs.

1     SECTION 8. Said Chapter 111E of the General Laws is hereby  
2     amended by inserting the following to the end of Section 5 as  
3     follows:—

4     If the Division is unable to comply with the provisions of this  
5     section, the bureau will prepare and publish annually a list of facili-  
6     ties operating in accordance with this chapter and shall make it

7 available to all District and Superior Courts; interested attorney's,  
8 and their statewide organizations; the offices of the District Attor-  
9 neys for each county, and their statewide organizations; and proba-  
10 tion departments, and their statewide organizations within the  
11 Commonwealth on an annual basis and to members of the public  
12 upon request. Such a list shall include, but not be limited to, the  
13 following:—

- 14     (a) eligibility of treatment
- 15     (b) scope of treatment offered
- 16     (c) applicable facility fees
- 17     (d) last known patient capacity
- 18     (e) facilities available for emergency treatment

1     SECTION 9. Said Chapter 111E of the General Laws is hereby  
2 amended by striking from Section 8 the second paragraph and  
3 inserting in place thereof the following:—

4     Upon receipt by the Director of an application for admission, the  
5 Director shall designate an addiction specialist to conduct an exami-  
6 nation of the person and determine whether that person is a drug  
7 dependent person who would benefit from treatment. The addiction  
8 specialist shall report his findings in writing to the Director after the  
9 completion of the examination, stating the facts upon which the find-  
10 ings are based and the reasons therefor.

1     SECTION 10. Said Chapter 111E of the General Laws is hereby  
2 amended by striking from Section 8 the fourth paragraph.

1     SECTION 11. Said Chapter 111E of the General Laws is hereby  
2 amended by striking from Section 10 the first paragraph and  
3 inserting in place thereof the following:—

4     Section 10. Any defendant who is charged with a first- or second-  
5 offense as defined by this chapter shall be informed that he is enti-  
6 tled to request an examination to determine whether or not he is a  
7 Drug Dependent Person who would benefit from treatment. A court  
8 may in its discretion request an examination of any person charged  
9 with a drug offense to determine whether a defendant is drug depen-  
10 dent and would benefit from treatment in accordance with this  
11 chapter.

1 SECTION 12. Said Chapter 111E of the General Laws is hereby  
2 amended by striking from Section 10 the third paragraph and  
3 inserting in place thereof the following:—

4 Court proceedings shall be stayed from the time a request for  
5 examination is made under this section and while that request is con-  
6 sidered by the court. Upon such a request, the court shall appoint an  
7 Addiction Specialist to conduct the examination at an appropriate  
8 location within three days of the granting of the request. In no event  
9 shall the request for such an examination or any statement by the  
10 defendant during the course of the examination, or any finding by  
11 the Addiction Specialist be admissible against the defendant in any  
12 court proceedings.

1 SECTION 13. Said Chapter 111E of the General Laws is hereby  
2 amended by striking from Section 10 the fourth paragraph and  
3 inserting in place thereof the following:—

4 The appointed addiction specialist shall report his findings in  
5 writing to the court within three days after the completion of the  
6 examination, stating the facts upon which the findings are based and  
7 the reasons therefor.

1 SECTION 14. Said Chapter 111E of the General Laws is hereby  
2 amended by striking from Section 10 the fifth paragraph and  
3 inserting in place thereof the following:—

4 If the defendant is also charged with the violation of any law  
5 other than a drug offense, the stay of the court proceedings may be  
6 vacated by the court upon the report of the addiction specialist,  
7 whereupon the report shall be considered upon disposition of the  
8 charges in accordance with Sections eleven and twelve, and the  
9 remaining provisions of this chapter shall not apply. If the defendant  
10 is charged with a drug offense only and the addiction specialist  
11 reports that the defendant is a drug dependent person who would  
12 benefit from treatment, the court shall inform the defendant that he  
13 may request assignment to a drug treatment facility and advise him  
14 of the consequences of the assignment, and that if he is so assigned  
15 the court proceedings shall be stayed for the term of such assign-  
16 ment.

1 SECTION 15. Said Chapter 111E of the General Laws is hereby  
2 amended by striking from Section 10 the sixth paragraph and  
3 inserting in place thereof the following:—

4 If the defendant requests assignment to treatment and the evalua-  
5 tion of the Addiction Specialists deems the defendant would benefit  
6 from treatment the court must stay the court proceedings and assign  
7 the defendant to a drug treatment facility.

1 SECTION 16. Said Chapter 111E of the General Laws is hereby  
2 amended by striking from Section 10 the eighth paragraph and  
3 inserting in place thereof the following:—

4 In determining whether a defendant is eligible for assignment  
5 under this section, the court shall consider the report of the addiction  
6 specialist, the defendant's criminal record , the availability of ade-  
7 quate and appropriate treatment, the nature of the offense with which  
8 the defendant is currently charged, including but not limited to  
9 whether the offense charged is that of sale or sale to a minor, and  
10 any other evidence the court deems relevant, provided, however, that  
11 where the offense charged is that of a sale or sale to a minor, no  
12 defendant may be assigned under this section unless that defendant  
13 is determined to be currently drug dependent, not merely at risk of  
14 becoming drug dependent.

1 SECTION 17. Said Chapter 111E of the General Laws is hereby  
2 amended by striking from Section 11 the first paragraph and  
3 inserting in place thereof the following:—

4 Section 11. Any person found guilty of a violation of law other  
5 than a drug offense, who prior to disposition of the charge, states  
6 that he is a drug dependent person, and requests an examination,  
7 shall be examined by an addictions specialist to determine whether  
8 or not he is a drug dependent person who would benefit from treat-  
9 ment. The court may use the determination that the defendant is a  
10 drug dependent person to place him into treatment services under  
11 this chapter.

1 SECTION 18. Said Chapter 111E of the General Laws is hereby  
2 amended by striking from Section 10 the ninth paragraph and  
3 inserting in place thereof the following:—

4     If the defendant is determined to be a drug dependent person  
5 under Sections 16 or 17 of this Act, requests assignment to treat-  
6 ment, and if the defendant is charged with a first or second drug  
7 offense not involving the sale or manufacture of dependency related  
8 drugs, or is assigned by the court, and there are no continuances out-  
9 standing with respect to the defendant pursuant to this section, the  
10 court shall order that the defendant be assigned to a drug treatment  
11 facility without consideration of any other factors notwithstanding  
12 Sections 16 and 17 of this Act.

1     SECTION 19. Said Chapter 111E of the General Laws is hereby  
2 amended by striking from Section 10 the eleventh paragraph and  
3 inserting in place thereof the following:—

4     If the defendant requests assignment to treatment and is deter-  
5 mined by an addictions specialist to be a drug dependent person that  
6 would benefit from treatment, and the defendant is charged with a  
7 first or second drug offense not involving the sale or manufacture of  
8 dependency related drugs, or is assigned by the court, and there are  
9 no continuances outstanding with respect to the defendant pursuant  
10 to this section, and adequate and appropriate treatment at a facility is  
11 not available, the stay of court proceedings shall remain in effect  
12 until such time as adequate and appropriate treatment is available.

1     SECTION 20. Said Chapter 111E of the General Laws is hereby  
2 amended by striking from Section 10 the first sentence of the fif-  
3 teenth paragraph and inserting in place thereof the following:—

4     If the Addiction Specialist reports that the defendant is not a Drug  
5 Dependent Person who would benefit from treatment, the defendant  
6 shall be entitled to request a hearing to determine whether or not he  
7 is a drug dependent person who would benefit from treatment.

1     SECTION 21. Said Chapter 111E of the General Laws is hereby  
2 amended by striking from Section 10 the first sentence of the nine-  
3 teenth paragraph and inserting in place thereof the following:—

4     Within ten days of the receipt by the court of an application for  
5 discharge, the administrator and an independent addictions specialist  
6 designated by the court to make an examination of the defendant  
7 shall report to the court as to whether or not the patient would ben-  
8 fit from further treatment at a facility.

1 SECTION 22. Said Chapter 111E of the General Laws is hereby  
2 amended by striking from Section 10 the first sentence of the twen-  
3 tieth paragraph and inserting in place thereof the following:—

4 Within ten days of the receipt of the court of an application of  
5 transfer, the administrator and an independent addictions specialist  
6 shall report to the court as to whether the defendant is a proper sub-  
7 ject for the transfer for which he has made application.

1 SECTION 23. Said Chapter 111E of the General Laws is hereby  
2 further amended by striking from Section 10 the last sentence and  
3 inserting in place thereof the following:—

4 The provisions of this section shall not apply to a person charged  
5 with violating Sections thirty-two to thirty-two G, inclusive, of  
6 Chapter ninety-four C of the General Laws; provided, however,  
7 notwithstanding the provisions of Section 32H of said Chapter 94C  
8 or any other law to the contrary, the provisions of this section shall  
9 apply to a person charged with a first or second offense of paragraph  
10 (a) of Section 32 of Chapter 94C or a first offense of paragraph (b)  
11 of said Section 32, a first or second offense of paragraph (a) of  
12 Section 32A of Chapter 94C or a first offense of paragraph (b) of  
13 said Section 32A, a first or second offense of paragraph (c) of  
14 Section 32A of Chapter 94C or a first offense of paragraph (d) of  
15 said Section 32A, a first or second offense of paragraph (a) of  
16 Section 32B of Chapter 94C or a first offense of paragraph (b) of  
17 said Section 32B, a first or second offense of paragraph (a) of Section  
18 32C of Chapter 94C or a first offense of paragraph (b) of said  
19 Section 32C, and a first or second offense of paragraph (a) of  
20 Section 32D of Chapter 94C or a first offense of paragraph (b) of  
21 said Section 32D.

1 SECTION 24. Said Chapter 111E of the General Laws is hereby  
2 amended by inserting the following to the end of the first paragraph  
3 of Section 12 as follows:—

4 A positive drug-screening urinalysis alone shall not be considered  
5 a breach of the terms of probation.

1 SECTION 25. This act shall not apply to any convictions entered  
2 or sentences imposed prior to the effective date of this act.